



STATE REPRESENTATIVE
JON RICHARDS

WISCONSIN STATE ASSEMBLY

Testimony of Representative Jon Richards
Assembly Bill 414
Assembly Committee on Public Health
December 1, 2009

Thank you, Chairman Benedict and members of the Assembly Committee on Public Health, for conducting a public hearing on Assembly Bill 414 and for giving me the opportunity to address the Committee.

Assembly Bill 414 will strengthen Wisconsin's food safety laws by requiring those seeking renewal of a certificate of food protective practices to pass a written examination. Under current law, successful completion of a written examination is required to receive a certificate but no examination is required to renew a certificate. Current law only requires the successful completion of a recertification training course.

According to the U.S. Department of Health and Human Services, "...*the presence of a certified food safety kitchen manager significantly reduces the risk for outbreaks of foodborne illness in restaurants. In fact, the presence of a certified food safety kitchen manager was the major distinguishing factor between restaurants in which foodborne illness outbreaks occurred and restaurants in which foodborne illness outbreaks did not occur.*"

The City of Milwaukee is ahead of the curve when it comes to food safety. In November of last year the City adopted an ordinance amendment which requires restaurant operators to successfully pass an accredited examination for food protective practices as a condition of renewal. I believe it is time to expand this level of protection to the rest of the state.

Assembly Bill 414 is supported by the Wisconsin Restaurant Association because they recognize the importance of professionalism and safe food handling procedures in maintaining a healthy business and healthy customers. This reasonable reform does not create a hardship for small business people and will pay dividends in terms of improved public health.

Thank you for giving me the opportunity to testify and for your interest in this legislation.



December 1, 2009

TO: Assembly Public Health Committee
Chuck Benedict, Chairman

FR: Ed Lump, President and CEO
Wisconsin Restaurant Association

RE: Support of Assembly Bill 414

The Wisconsin Restaurant Association represents approximately 7,000 foodservice outlets in the state and represents all aspects of the restaurant industry, from small "mom and pop" restaurants to multi-unit, multi-state restaurants.

WRA and its members are dedicated to food safety and for that reason WRA is here today to support Assembly Bill 414 that changes Certified Food Protection Manager recertification requirements to be equal to the requirements of initial certification. WRA recognizes the need for the highest standards in food safety. We have always felt it is important that we maintain the confidence of the public, for without that the restaurant industry cannot exist.

The WRA led the charge to mandate having a Certified Food Protection Manager at every restaurant in Wisconsin. The WRA also worked with the city of Milwaukee, when it mandated that each restaurant had to have a certified manager on duty during hours of preparation and operation. One year ago, the City of Milwaukee also passed an ordinance to require all Certified Food Protection Managers who work in the City of Milwaukee to be recertified by taking an a National Conference for Food Protection (NCFP) accredited examination.

Now that the Certified Food Protection Manager requirement has been in place for almost 15 years, we believe that it is time to update the requirement to reflect what industry and regulatory officials have learned since 1995. Much of this can be accomplished by following the guidelines set forth regarding recertification by the NCFP. This means following the NCFP's requirement that a manager must be recertified by an accredited organization using one of that organization's psychometrically sound exams.

Periodic re-certification by accredited exam, as opposed to training, is a necessary means to ensure continued public safety. Unlike training situations, whereby individuals may be awarded credit for simply being present, the certification examination provides an objective measure of an individual's safe food handling knowledge and is a valid and reliable demonstration of competency. The passing of an exam from a NCFP accredited test provider proves that a basis of knowledge has been gained (or retained) and will hopefully be taken back to the foodservice operation and applied.

The current law allowing recertification without passing an approved exam has resulted in:

- No reliable and legally defensible process for assessing continued competency of Food Protection Managers.

- No consequence for the operator who fails to demonstrate competencies or learn new techniques in food safety through “seat-time” (direct training contact time) only training. Without the testing requirement, there is no consequence for not paying attention to important food safety information. This is not a reliable or legally defensible way of assessing a person’s knowledge.
- A lack of uniformity between those states and other jurisdictions that include an NCFP accredited examination as part of recertification and those who recertify in Wisconsin. There are over 100 jurisdictions nationwide, including 23 states, which mandate a Certified Food Protection Manager for each establishment. Only two states, Wisconsin and Minnesota, allow recertification without taking a nationally accredited exam.

We believe that these three points are critical flaws in Wisconsin’s current recertification process. It is for these same reasons that every mandated state but Wisconsin and Minnesota requires taking an approved exam every five years to remain certified.

Those in opposition to requiring recertification exams cite two reasons to keep our current requirements:

- The requirement is redundant – the information needed to pass is the same so why the need to retest?

Restaurant owners and managers who have not taken exams since initial certification will be at a disadvantage when taking these high stakes exams.

I would like to address each of these claims and give you reasons why they are not valid reasons to keep the status quo.

A Food Protection Manager Certification exam is designed to assess individuals’ competence in food safety and in the practices required to protect the public from foodborne illness. The examination is considered a HIGH STAKES test in that the outcome (passing or failing) may have serious consequences for the individual test taker and for the public at large.

Food Protection Manager Certification exams are developed by certifying organizations based on rigorous standards developed by the NCFP and audited and accredited by the American National Standards Institute (ANSI). A key component to accredited exam development is the use of a Job Task Analysis or JTA to determine the essential knowledge, skills and abilities required to serve food safely. JTA’s are used as the foundation for exam development in all industries and professions and are used to develop exam questions.

The NCFP requires Certified Food Protection Manager Certification exam developers to perform a new JTA at least every five years because the science of serving safe food changes regularly and because certification exams are HIGH STAKES. Food safety requirements change all of the time! For example, the FDA releases new food safety regulations as new information becomes available and the science behind what’s required to keep food safe is constantly updated. The FDA Food Code is updated every two years, requiring the food industry to constantly update its food safety protocols within all food establishments. Some examples of these include:

- Changing hot holding times and temperatures for any food held for long term service
- Addition of foods that once were generally regarded as safe to the list of foods that need time and temperature control

- Changes in requirements to exclude ill employees from the food establishment

These are just a small sample of the types of changes in food safety science that happen on an ongoing basis. Perhaps the biggest change that has happened in the world of restaurant food safety is the change to risk based inspections.

Restaurants are no longer inspected by looking at floors, walls and equipment for cleanliness. Inspectors evaluate operators on their ability to implement an entire food safety system from the time food enters their back door to their customer walks out their front door. Operators must be continually challenged to learn new food safety information to be able to keep clean food safety inspection report.

The WRA Education Foundation uses the ServSafe® Food Protection Manager Certification examination in its certification courses. In developing the ServSafe Examination, a new JTA is performed every four years and revalidated after two. This ensures that the examination assesses the most current, up-to-date information and aligns with national food safety standards.

If the knowledge, skills and abilities needed to serve food safely and protect the public were as redundant as the opponents of this bill claim, then requirements to perform a JTA at least every five years would not be in place.

We have many examples of operators who have successfully recertified by taking the Food Protection Manager Certification exam. As an example, Tom Saxe, owner of Saxe's Dining and Banquets in Delafield, recently took the ServSafe exam. He was originally certified in 1994, and was recertified every five years through the minimum seat time method. He accidentally waited too long to recertify the easy way and his grace period of six months passed, forcing him to have to take the full certification exam. Remember, Tom last took the exam in 1994 which according to recertification testing opponents puts him at a big disadvantage. Well, not only did Tom pass the exam with flying colors... he stated that it was a great way to make sure food safety measures in his restaurant are in tip-top shape and he has implemented new procedures to further protect his customers. He firmly believes that he would not have taken these new measures if he was not required to take an exam and really spend time learning new food safety information.

In addition, foodservice professionals in Wisconsin are successfully demonstrating their commitment and ability through their exam pass rate. I only have access to confirmed information about the ServSafe program – which has a pass rate of 84 percent with an average score of 84 percent so far in 2009. These figures are a few percentage points higher than the national average. This rate includes all exams given in English, Spanish, Chinese and Korean.

Apparently other exam providers have even higher pass rates, since I have seen the Tavern League advertise a 99 percent passing rate for their exam program.

Thank you for this opportunity to give you more information on why recertification testing is a very important step the foodservice industry must take in Wisconsin. Protecting our industry and the public in every way possible is the goal of the WRA and should be for everyone here today.



State of Wisconsin
Department of Health Services

Jim Doyle, Governor
Karen E. Timberlake, Secretary

Assembly Committee on Public Health

Assembly Bill 414

December 1, 2009

James Kaplanek, Chief for Food Safety and Recreational Licensing Section
Rachel Currans-Sheehan, Legislative Liaison

Chairman Benedict and members of the committee, thank you for the opportunity to testify today on AB 414. Hello, my name is James Kaplanek, chief for the Food Safety and Recreational Licensing Section (FSRL) with the Bureau of Environmental and Occupational Health (BEOH) in the Department of Health Services.

The FSRL program works with the food service industry to ensure safety of food service in Wisconsin. The FSRL program currently certifies more than 46,000 food managers in the State of Wisconsin. The National Conference for Food Protection recommends that food managers take and pass a national exam in food safety practices. Wisconsin has followed this standard since 1995. Initial certification is accomplished by taking and passing an approved national exam that is good for five years. In Wisconsin, food managers can then recertify by attending a recertification course that consists of a minimum three hours of class room training in food safety followed by a short quiz reviewed in class, this will renew their certification for another five years. When Wisconsin first developed the recertification criteria there were no recommendations from the National Conference for Food Protection.

This bill is revenue neutral to DHS. Our fee structure and costs for certification requirements do not change with this bill. Individuals are still required to be certified every five years.

During the 2002 National Conference for Food Protection, a new standard for recertification was adopted. This standard stresses the assessment of continued competence of Certified Food Protection Managers by requiring the successful completion of a nationally accredited examination at an interval of no more than five years.

The Department joins the Wisconsin Restaurant Association in its support of Assemble Bill 414, requiring Food Managers to certify by exam every five years, for the following reasons:

- The current recertification process does little to assess knowledge. Over the course of five years, there are many advances in science and technology and changes in the FDA Model Food Code. Assessing knowledge based on passing an examination from an accredited certification program is the most reliable way of ensuring that Food Protection Managers have the required education and competencies.
- Accreditation enhances consumer and public confidence in a certification program by assuring the existence of a continuous review and the improvement of quality and accountability.
- The exam component every five –years is based on a legally defensible and psychometrically valid job task analysis.
- Wisconsin Food managers that take and pass a national exam have the benefit of their certification being accepted by other states. Currently that is only true during the first five years in Wisconsin; once they take the Wisconsin recertification course they no longer have national certification.

This proposal is protective of public health and supported by the Department of Health Services.

December 1, 2009

TO: Assembly Public Health Committee
Chuck Benedict, Chairman

FR: Steve Davis, Owner
Ardy and Ed's Drive-In, Oshkosh

RE: Support of Assembly Bill 414

Good afternoon, Chairman Benedict and Assembly Public Health Committee members. I am Steve Davis, co-owner of Ardy and Ed's Drive-In in Oshkosh. -- a seasonal business that operates from March through September every year. Serving Oshkosh for more than 61 years, the restaurant is a summer tradition with local families, as well as the many families that visit Oshkosh each year. I am also the current chairman of the board for the Wisconsin Restaurant Association Education Foundation.

I strongly believe that Wisconsin is, and needs to stay, a leader in food safety. That is why I support Assembly Bill 414.

- In my experience as a restaurant owner and manager, food safety has risen to the top as an issue of importance for the restaurant industry. Educating myself and my employees about food safety is increasingly important to my business.
- I believe that education of managers and employees plays a key part in preventing food borne illness. However, without testing there is no guaranteed learning. I believe that it is important that Certified Food Protection Managers should take an approved test in order to maintain their certification.
- As a small independent operator, I need to remain competitive and keep up with all of the restaurants in my area. Unlike a franchisee, I do not have a corporate food safety director to help me with my food safety plans for my restaurant; I need to develop it myself. Recertification through testing keeps me and my fellow small operators



sharp and competitive.

- Now that the national guidelines require an exam for Certified Food Protection Manager recertification, I believe Wisconsin should too. Wisconsin needs to be a leader and be part of the national food safety system. We should not be an island, where we do not meet the same standards as other mandated states.
- The foodservice industry is made up of professionals. As professionals we must be accountable for protecting the public who patronize our establishments. This is a serious issue and our industry realizes the importance of food safety and the need for maintaining our level of food safety knowledge, which outweighs any inconvenience caused by taking an exam every five years.
- The mechanisms are in place for people to start recertifying by exam right now. No new review courses or exam sites need to be developed. Today, there are many options for operators to get themselves prepared to take an exam every five years. There are now many online training and review options available to our industry, in many languages. These courses allow you to learn at your own pace and repeat areas that you may need extra help on. And, of course, if traditional face-to-face training is more an operator's learning style, those are available from many sources around the state.
- I take food safety and professionalism in our industry very seriously. In order to protect the restaurant and tourism industry in Oshkosh and the rest of Wisconsin, I need to be assured the restaurant; tavern or grocery store deli down the road takes food safety as seriously as I do.
- If there is a food borne illness outbreak in my town that could have been prevented by the food establishment, all of us pay for it. I pay for it with reduced business because local patrons will think they are safer eating at home and tourists will avoid our area. Food borne illness outbreaks at an Oshkosh Hotel in 1993 and 2003 both had a negative effect on business at that hotel, as well as the many local businesses that served those hotel guests. During the current economic climate, we can not afford the consequences of any outbreaks caused by untrained and untested managers in our communities.

- Recertification testing is the right thing to do - for both the consumer and the food industry.
- Thank you for your time



December 1, 2009

**TO: Assembly Public Health Committee
Chuck Benedict, Chairman**

**FR: Linda Wendt, Owner
Wendt's on the Lake, Van Dyne**

RE: Support of Assembly Bill 414

Good afternoon. My name is Linda Wendt and I am the owner of Wendts on the Lake in Van Dyne. I am also the current Chairwoman of the Board for the Wisconsin Restaurant Association.

I am here today to express support for Assembly Bill 414.

- As a small business owner I have a lot of different issues on my plate that I must pay attention to. None are more important than food safety.
- All of my kitchen staff members are required to be Certified Food Protection Managers. I pay for them to attend the review course and take the initial exam, as well as their recertification classes when they must renew. I feel the knowledge gained is essential to be preparing food in my kitchen.
- I know I only need one certified manager to meet the minimum state requirements, but I feel it is necessary to have more of my people trained and certified to protect my business and customers
- At this time I have 9 employees who are certified. I post my staff's certificates so that my customers can feel confident in my staff's ability to prepare quality food while using all the required food safety laws that Wisconsin requires.

- I have had employees express a desire - after completing the recertification courses - to be given more information. This tells me that they are not getting enough information in their recertification classes and that recertification testing would be the answer. I would know my staff to know for sure that they have achieved the full benefit of the class when they pass the exam.
- I believe that recertification testing for all foodservice establishments would be a Win-Win for Wisconsin. Operators and managers must take food safety seriously, including being truly certified and knowledgeable in all food safety information. By requiring an accredited exam every five years, I feel that more emphasis will be placed on learning and practicing proper food safety procedures. Wisconsin consumers and tourists will be safer for it.
- This issue could be compared to picking your doctor: would you choose a doctor who proved he or she had the knowledge to treat you or one who did not? Wisconsin foodservice guests want to know that when it comes to food safety they can feel safe while dining in our establishments.
- I know that a testing requirement will cost me and my fellow small businesses a few more dollars to implement, but I feel the benefits are worth it. And besides – we are talking about taking an exam every five years – not every year. The cost of the exam will add about \$25-50 to current courses and other exam options. Spread out over five years that is a small price to pay for knowledge. You cannot put a price on preventing a food borne illness.

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